

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Donna Zigmantanis; Faith M. Dowden; Meredith
Mumpower; Jennifer Newton; Yelizaveta
Liokumovich; Allison Case Morgan; Ahman Jacob
Lemus Chavez; James Darryl Robinson; Michael D.
Brady; Michele Nelson; Nancy B. Tiller; Paige
Bickar; Alison K. Starosky; India Roark Springs,

Plaintiffs,

v.

Henry McMaster; Henry Knapp; Wanda Hemphill;
Chris Whitmire; John Wells; Joanne Day; Linda
McCall; Clifford J. Edler; Scott Mosely; Marci
Andino,

Defendants.

Civil Action No. 3:22-cv-2872-SAL

Order Adopting Report and Recommendation

This matter is before the court for review of the February 10, 2023 Report and Recommendation (“Report”) of United States Magistrate Judge Paige J. Gossett made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). [ECF No. 48.] In the Report, the magistrate judge recommends granting Defendants Henry McMaster’s and Marci Andino’s Motions to Dismiss, ECF Nos. 30 and 36 respectively. *Id.* at 6. Attached to the Report was a Notice of Right to File Objections, which informed the parties “[s]pecific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation.” *Id.* at 7. Objections were due by February 24, 2023. *Id.* Plaintiffs did not file objections to the Report, and the time to do so has passed.

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of only those portions of the Report that have been specifically objected to,

and the court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). With no objections, the court need not explain its reasons for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After a thorough review of the Report, the applicable law, and the record of this case in accordance with the above standard, the court finds no clear error, adopts the Report, ECF No. 48, and incorporates the Report by reference. Accordingly, Defendants Henry McMaster’s and Marci Andino’s Motions to Dismiss, ECF Nos. 30 and 36 respectively, are **GRANTED** and Plaintiffs’ claims related to those two Defendants are **DISMISSED** without prejudice.¹

IT IS SO ORDERED.

April 17, 2023
Columbia, South Carolina

/s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge

¹ The remaining Defendants, collectively the State Election Commission or SEC Defendants, filed a Response to the Report. [ECF No. 51.] The SEC Defendants “respectfully submit that Plaintiffs’ Amended Complaint should be dismissed in its entirety pursuant to [Federal Rule of Civil Procedure] 12(b)(1) because the [c]ourt lacks subject matter jurisdiction over Plaintiffs’ claims.” *Id.* at 2. However, the magistrate judge’s recommendations were based on Rule 12(b)(6), Fed. R. Civ. P., not Rule 12(b)(1), and specifically addressed claims against Defendants McMaster and Andino, not the SEC Defendants or Defendants generally.

The SEC Defendants also state in their Response they “asserted in their Answer to Amended Complaint the Plaintiffs’ lack of standing and the non-justiciability of Plaintiffs’ claims.” [ECF No. 51 at 2.] The court acknowledges the SEC Defendants raised several defenses in their Answer, but a Response to a magistrate judge’s Report is not the proper vehicle by which to bring those defenses before the court for consideration.